



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

April 15, 1947

Hon. Ray Lackey
County Auditor
Yoakum County
Plains, Texas

Opinion No. V-146

Re: Lawful right of a person
to hold the offices of
city councilman and jus-
tice of the peace at the
same time.

Dear Sir:

Your inquiry under date of April 3, 1947,
solicits an opinion of this department on the question:

"Can a city councilman that was elec-
ted by the people of an incorporated city
serve as justice of the peace when he is
appointed by the commissioners' court?"

City councilmen and justices of the peace are
not authorized to perform the same kind of services;
neither of them have any right to direct or review ser-
vices performed by the other; so there is nothing incom-
patible in the performance of the duties of said offices.

The pertinent part of Section 40 of Article
XVI of the Constitution of Texas is as follows:

"No person shall hold or exercise, at
the same time, more than one civil office
of emolument, except Justice of the Peace,
County Commissioner, Notary Public . . ."

That section of the Constitution, as it per-
tains to the office of Justice of the Peace, is in the
Constitution of 1845. In 1856 the Supreme Court said,
in Powell vs. Wilson, 16 Tex. 59:

"It is clear, therefore, that two civil
offices of emolument cannot be united in the
same person, unless one of them be that of
Justice of the Peace, which is specially ex-
cepted." (Emphasis added)

In 1890 the Supreme Court cited the Powell
Case with approval in Gaal vs. Townsend, 77 Tex. 464,

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14 S. W. 365, in which the Court again decided that one person may hold more than one office of emolument at the same time if one of such offices be that of justice of the peace. In that case, Gaal was one of the elected county commissioners of El Paso County and accepted the office of mayor of the incorporated town of Ysleta. The Supreme Court decided that, under the Constitution, Gaal could lawfully hold the offices of county commissioner of El Paso County and mayor of Ysleta at the same time; the court said:

" . . . the words . . . indicate that it was intended that a person might lawfully hold any office and in addition thereto either of the offices enumerated." (Emphasis added)

Opinion Nos. 0-382, 0-2055, 0-2184 and 0-6524 of this department construed the language of Section 40 of Article XVI of the Constitution. We enclose a copy of each of those opinions for your information.

We are of the opinion that a person may hold the offices of city councilman and justice of the peace at the same time.

SUMMARY

A person may hold the offices of city councilman and justice of the peace at the same time under specific provisions of Art. XVI, Sec. 40, of the Texas Constitution.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By

W. T. Williams
W. T. Williams
Assistant

APPROVED APR. 15, 1947

Price Daniel
ATTORNEY GENERAL

WTW:sl:dr:mrj